

**N.D.A.G. Letter to Schindler (Dec. 16, 1986)**

December 16, 1986

Honorable Orville Schindler  
State Representative  
District 31  
McClusky, ND 58463

Dear Representative Schindler:

Thank you for your recent letter posing three questions to this office concerning the North Dakota habitat restoration stamp program.

Your first question is why the current balance within the habitat restoration fund has not been spent and what happens to any balance remaining in the fund at the end of the biennium. According to the information supplied by the North Dakota Game and Fish Department, there is an approximate balance of \$200,000 in this fund at this time. As of June 30, 1986, information provided by the State Auditor's Office indicates a balance of \$227,970. As the administration of this program is not within my authority or scope of responsibility, I am unable to provide you with the specific reasons why all of these funds have not been spent at this time.

Information supplied to me by the Game and Fish Department indicates a history of a \$500,000 biennial appropriation for this project. For the 1985-87 budget, Game and Fish requested an expenditure increase of \$20,000 from this particular fund. However, according to Game and Fish officials, the Office of Management and Budget cut the \$20,000 increase request leaving the appropriation at \$500,000. Because of this experience and Game and Fish perception of budget attitudes for the 1987-89 budget, the 1987-89 budget request for expenditure of funds from this habitat restoration fund is \$500,000.

You also inquire as to what happens to any balance remaining in this fund at the end of a biennium. The appropriate language from N.D.C.C. § 20.1-03-12.1 is as follows:

Any moneys generated by the stamp fee and not expended during a biennium shall remain in the fund to be expended for the same purposes during the next biennium.

Obviously, the clear words of the statute prevent such unexpended funds from being lost or otherwise diverted to another fund. Unexpended moneys will remain in this fund and will be transferred over to the next biennium to be expended to lease privately owned lands for wildlife habitat.

However, this language does not constitute an appropriation, continuing or otherwise. It simply provides that the remaining moneys within this fund shall remain within the fund

and be available for expenditure. In order to cause an expenditure of public moneys, including moneys within the habitat restoration fund, an appropriation is needed from the Legislature. N.D. Const. Art. X, § 12.

Thus, in answer to your first question, there is a balance of some \$200,000 in the habitat restoration fund which has not been spent as the Legislature has failed to appropriate all such moneys for expenditure. Moneys within this fund which are not expended remain in the fund for expenditure for the same purposes during the next biennium so long as an appropriation by the Legislature is obtained.

There is nothing in the law nor within the legislative history providing specific time limitations within which such moneys must be spent before they are lost or otherwise diverted to other uses. However, the spirit of the law suggests that moneys within the fund ought to be spent either in the biennium in which the moneys were generated or in the following biennium. That spirit is not furthered by the continual carryover of fund moneys from one biennium to the next.

Your second question concerns the interest earned from the money located within the habitat restoration stamp fund. The current statutes are silent as to which fund must receive the interest from this particular special fund. Given the fact that these interest moneys are earned upon moneys located within the habitat restoration fund, which has a statutorily required purpose, the logical conclusion and one which I do adopt is that interest from the habitat restoration fund should remain with the habitat restoration fund.

Your final question concerns revenues generated from the sale of habitat stamp artwork. You question how much money has been earned by the state from the sale of habitat restoration artwork and where does the money go. Information supplied to this office by the Game and Fish Department indicates that for 1984 \$66,021 was received from the art prints program as gross revenue. After subtracting appropriate expenses, the net revenue to the state was \$21,514. Information is apparently not yet available for the 1985 and 1986 sales, but Game and Fish expects revenues to decline given the saturated wildlife print market on a national basis.

As to your question concerning the deposit of the revenues generated from the sale of such artwork, it is my opinion that such revenue is to be credited to the Game and Fish fund as opposed to the habitat restoration fund.

N.D.C.C. §20.1-03-12.1 is the statute establishing the habitat restoration stamp program. This statute requires a habitat restoration stamp for every resident and nonresident small game hunting license for which a stamp fee of \$3 shall be charged. The statute contains three consecutive sentences which are crucial in answering your question. Those sentences are as follows:

The moneys generated by the habitat restoration stamp fee are intended to provide a fund to lease privately-owned lands for wildlife habitat. Not more than ten percent of this fund

may be used for administrative purposes. All other moneys generated by the habitat restoration stamp fee shall be used for lease payments.

The language used in this statute is limited by its very terms to moneys generated by the habitat restoration stamp fee. The sale of habitat stamp artwork does not result in revenues generated by the habitat restoration stamp fee. The stamp fee is \$3 and the revenues from sale of the artwork are dependent upon the prices of the various artwork. There is no language in this statute or elsewhere requiring moneys received from the sale of art prints taken from the design used on the habitat restoration stamp to be placed in the habitat restoration stamp fund. For these reasons, it is my conclusion that the revenue from the sale of habitat stamp artwork are to be credited to the general Game and Fish fund pursuant to N.D.C.C. §20.1-02-16.1.

I realize there are those with the opinion that a particular sentence found within N.D.C.C. §20.2-03-12.2 leads to a contrary conclusion. The particular sentence is as follows:

All other moneys generated by the habitat restoration stamp fee shall be used for lease payments.

There are two reasons why this particular sentence does not require revenues from the sale of habitat stamp artwork to be credited to the habitat restoration stamp fund. First of all, such revenues are not generated by the habitat restoration stamp fee (sold for \$3.00) as has been previously explained. More importantly, the phrase "all other moneys" refers to the prior sentence found within the statute which prohibits the use of more than ten percent of the fund for administrative purposes.

In other words, it is not possible to take this particular sentence out of context. The context in which this sentence and the previous sentence are used indicates that all moneys generated by the habitat restoration stamp fee, except for a maximum of ten percent to be used for administrative purposes, shall be used for lease payments. The phrase "[a]ll other moneys" does not refer to revenue from the sale of habitat stamp artwork.

Finally, I have searched and reviewed the legislative history behind the enactment of the habitat restoration stamp fund. I find nothing in the legislative history to suggest that revenues from the sale of habitat stamp artwork were to be deposited with this particular fund.

Sincerely,

Nicholas J. Spaeth

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